

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re: Bankruptcy No. 04-41614
RICHARD JOSEPH KARL AND Chapter 7 Case
BONNIE ANN KARL,
Debtors.

**DEBTORS' MEMORANDUM IN RESPONSE TO TRUSTEE'S OBJECTION TO
DEBTOR'S EXEMPTION CLAIMS**

TO:

INTRODUCTION

This memorandum is submitted in opposition of the Trustee's objection to certain of debtors' claims of exemption with respect to a SEP IRA, an IRA, and with respect to the inclusion of a PERA Account in the calculation of the dollar limits for the debtors' exemptions.

ISSUES

1. The Trustee objects to the debtors' claim evidenced by debtors' amended schedules that the present value of the SEP IRA and the IRA is the face value of the IRAs, less the penalty for early withdrawal and state and federal taxes.
2. The Trustee proposes that the PERA account, thus valued at \$841, be included in the calculation of the \$54,000 limit for exempt values of retirement accounts under Minn. Stat. Section 550.37(24).
3. The Trustee argues that since both debtors are employed and receive reasonable income the SEP, PERA and IRA Accounts are not needed for support of the debtors. Debtors

concede this point and do not intend to contest the Trustee's objection on that basis.

ARGUMENT

1. The present values of the IRAs' aggregate value is less than \$54,000.

Debtors have claimed that a SEP IRA and another IRA Account are exempt under Minnesota Statutes 550.37, Subd. 24, which provides as follows:

Subd. 24. **EMPLOYEE BENEFITS**

- (a) The Debtor's right to receive present or future payments, or payments received by the debtor, under a Stock Bonus, Pension, Profit Sharing, Annuity, Individual Retirement Account, Roth IRA, Individual Retirement Annuity, Simplified Employee Pension, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent of the debtor's aggregate interest under all plans and contracts up to a present value of \$30,000 (\$54,000 currently per indexing) and additional amounts under all the plans and contracts to the extent reasonably necessary for the support of the debtor and any spouse or dependent of the debtor.

The Minnesota Supreme Court recently determined that individual retirement accounts are exempt per Minn. Stat. Section 550.37(24). Clark v. Lindquist, 683 NW2d 784 (Minn. 2004). The Court in Clark held that an IRA is exempt property as limited by the terms of Subdivision 24 "to an indexed present value and sums reasonably necessary for the support of the debtor and the debtor's spouse or dependents."

The issue in this case is what the term "indexed present value" means. The debtor's position is that indexed present value should be calculated by taking the face amount of the IRA and subtracting from that amount the early withdrawal penalty as well as the federal and state tax liability the debtors would experience upon an early withdrawal of the IRA.

In this case, the SEP IRA is in Richard's name; the other IRA account as well as the PERA account is in Bonnie Karl's name. Minnesota Stat. Section 550.37 (24) refers to the

debtor's (singular) right to receive payment from a retirement plan. In this case, since the IRAs are owned individually, one by each of the debtors, both Mr. Karl and Ms. Karl should be entitled to accounts in an aggregate value of not more than \$54,000.00. The value of Bonnie Karl's IRA, taken at its face and without deduction for penalty and taxes, is less than the \$54,000 limit. The question then becomes whether the "indexed present value" of Richard Karl's IRA is greater than or less than the \$54,000 limit. The debtors' position is that Richard Karl's IRA's present value is less than \$54,000.

Richard Karl is 48 years old. If forced to liquidate his IRA, there would be an automatically withheld 10% early withdrawal penalty. 26 USC Section 72(f). Additionally, Richard would be subject to state and federal income taxation. At Mr. Karl's stated income, it is anticipated that he would have a tax rate on the early withdrawal of 27% for federal taxes and 5% for state taxes. Taken with the 10% penalty, the after-tax value of liquidation for the SEP IRA is \$39,811, as is evidenced in the Second Amended Schedule filed by the debtors. Parenthetically, Bonnie Karl's IRA has an after-penalty and after-tax value of \$10,283.

There is little guidance in case law from this jurisdiction as to how to calculate the present value of the IRA. The debtors argue that since the early withdrawal penalty and taxes will have to be paid by either the debtors if they choose to withdraw from the IRA early or the Bankruptcy Trustee if the IRA is turned over. Neither Mr. Karl, nor the trustee will receive the benefit of more than \$54,000 if the IRA is liquidated at this time. For that reason the Court should find that the present value of the IRA is the face value, less taxes and penalties.

2. The PERA Account should not be included in calculating the aggregate interest in the retirement accounts for purposes of Minn. Stat. Section 550.37, Subd. 24. Subd. 24 of the statute limits the exemption for IRAs and other retirement accounts to a "aggregate interest" of \$54,000.

The Trustee relies on In Re Neilson, 1998 WL 3379 (Bky. D. Minn. 1998) (J. Dreher). In Neilson, the Court found that ERISA qualified plans should be included in calculating the total value of pension accounts. However, Neilson is not the only case that has passed on this. In In Re Hawkinson, 222 BR 334 (Bky D. Minn. 1998) (J. O'Brien), the bankruptcy court held that ERISA qualified plans should not be included in the calculation of the "aggregate value" of retirement plans. The rationale in the Hawkinson case was that Section 550.37 subd.(24) refers only to non-Erisa qualified plans, and thus non-Erisa qualified plans should not be used to calculate the aggregate value of retirement interests.

CONCLUSION

The debtors' SEP and IRA accounts have a present value of less than \$54,000 and thus debtors' claim of exemption with respect to these IRAs should be allowed. As a matter of law, Bonnie Karl's PERA account should not be considered in calculating aggregate value of pension and retirement accounts.

Dated: September 17, 2004.

RESPECTFULLY SUBMITTED,

SCHMIDT AND LUND

By William P. Kain

WILLIAM P. KAIN #143005

Attorney for Debtors

13 South Seventh Avenue

St Cloud MN 56301

320-252-0330

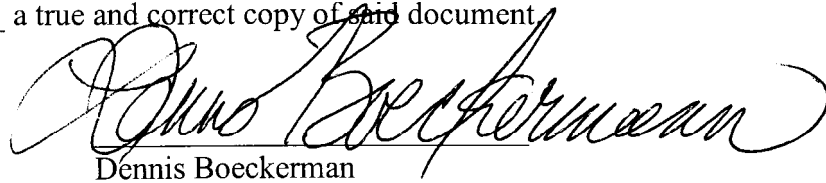
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STATE OF MINNESOTA)

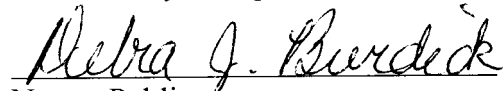
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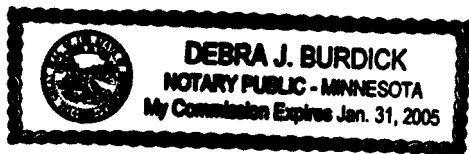
COUNTY OF STEARNS)

Dennis Boeckermann of Stearns County, Minnesota, upon first being duly sworn, and on oath, says that in the City of Minneapolis, County of Hennepin, State of Minnesota, on the 17th day of September, 2004, he served the attached Debtors' Memorandum in Response to Trustee's Objection to Debtors' Exemption Claims upon Patrick Summers by then and there handing to and leaving with Jannyce Barbie a true and correct copy of said document.


Dennis Boeckermann

Subscribed and sworn to before me
this 17th day of September, 2004.


Notary Public



AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)

) ss.

COUNTY OF STEARNS)

Deb Burdick, being first duly sworn upon oath, deposes and states that on the 17th day of September, 2004 she served the attached Debtors' Memorandum in Response to Trustee's Objection to Debtor's Exemption Claims upon U.S. Trustee by then and there enclosing a true and correct copy thereof in an envelope addressed as follows:

U S TRUSTEE
1015 U S COURTHOUSE
300 S FOURTH ST
MINNEAPOLIS MN 55415

and depositing the same at the United States Post Office in St. Cloud, Minnesota 56301.

Deb Burdick
Deb Burdick

Subscribed and sworn to before me
this 17th day of September, 2004.

Brenda Loch
Notary Public

